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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,170

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Ross J. Hamel

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EXAMINER

MAI, HAO D

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

12/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/676,170	Applicant(s) HAMEL, ROSS J.	
	Examiner HAO D. MAI	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9-17,19,21,23,25-36,40,41,44-50 and 52-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-36, 40-41, 44-50, 52-59, and 64-68 is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9-17,19,21,23,25-30 and 60-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 4-7, 9-17, 19, 21, 23, 25-30, and 60-63, are rejected under 35 U.S.C. 103(a) as being unpatentable over Koteles et al. (5,938,592) in view of Scirica et al. (2002/0035313).**

Regarding claim 1, Koteles et al. disclose surgical retractor (Fig. 2) comprising: a handle 22/34 having a longitudinal axis, proximal and distal ends, and a longitudinally elongated outer surface that is capable of being held by an operator; a first coupling mechanism 32 coupled to the proximal end of the handle; and a blade member 46 having proximal and distal ends. The coupling mechanism comprising a knob 42 having a bore, wherein at least a portion of the knob is disposed within the handle, and wherein the knob is rotatable about the longitudinal axis of the handle. The blade member 46 comprises a coupling element (shaft 24) being configured and dimensioned to be received in the bore of the knob; wherein rotation of the knob in a first direction causes shaft 24 to advance into the bore of the knob. As to the newly added limitation to claim 1, note that when the coupling element 24 is not received in the bore of the knob, the blade member is inherently detached from the handle.

Koteles et al. disclose the invention substantially as claimed except for the opening in the handle where the knob 42 is disposed does not have an enclosed perimeter. Nonetheless, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to modify Koteles et al. by enclosing the opening's with a fourth side since that would have been merely a design choice producing the same and/or predictable results. Note that such modification does not change how Koteles' device work since knob 42 can still be freely inserted into the opening when the fourth side is included to make an enclosed perimeter. Furthermore, applicant does provide how such enclosed perimeter to the opening would be critical to the invention. Scirica et al. disclose a similar mechanism of handle 238 having an opening with enclosed perimeter for receiving dial/knob 240 (Fig. 29) Dial/knob 240 has threaded bore for receiving an instrument 212's coupling element 242; wherein rotation of dial/knob 240 causes the coupling element 242 to advance into or release from the dial/knob. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Koteles et al. by making the opening with an enclosed perimeter as shown by Scirica et al. in order to make the handle or the opening area more stable or easier to held onto by the user.

As to claim 4-6, Koteles et al. show the coupling element 24 comprising a shaft having outer threads 44 to mate with the inner threads of the knob's bore; and the handle is shown to have an opening to receive knob 42. As to claims 7 and 9, Figure 7A shows a retractor blade having an opening (between extension 98, 100) at the distal end of the blade that is configured and dimensioned to be capable of allowing a surgical tool or an orthopedic to pass there through. As to claims 10-13, the blade has a structure that is capable of stabilizing itself against bone; and Figs. 7A-7C show the blade having a hook-shape with a C-shape and/or an L-shape. As to claim 14, note the either of the second coupling 32 or the pivot clamp 54 can be a second coupling mechanism locating on the handle capable of coupling a second surgical instrument to the handle. As to claims 15-17, the second surgical instrument and any limitations thereof are not given patentable because the second surgical instrument is only inferentially claimed. As to claims 19, 21, and 23-27, Koteles et al. disclose a second coupling mechanism 50 comprising a

coupling member (snap connection 58) contacting a second member (pivot clamp 54), wherein the coupling member 58 and the second member 54 are operatively associated to fix a second surgical instrument (rake 52) with respect to the handle. The coupling member/snap connection 58 is telescopically received within the handle and comprises a recess (formed by hook 64) capable of receiving a portion of rake 52 (Fig. 2). As to claims 28-29, Koteles et al. disclose another surgical instrument such as one of the retractor blades shown in Figs. 7A-8B having a coupling element (shaft 104) that is configured and dimensioned to connect interchangeably with the first coupling mechanism. As to claim 30, note the second handle (connector hub 70) being transverse to the longitudinal axis. As to claims 60-63, note that the longitudinal axis extends through the first coupling mechanism 32 while the second coupling mechanism 50 is spaced from the longitudinal axis of the handle.

Allowable Subject Matter

3 Claims 31-36, 40-41, 44-50, 52-59, and 64-68, are allowed.

Response to Arguments

4. Applicant's arguments with respect to the amendments to claim 1 are not persuasive and/or moot in view of new ground(s) of rejection. Such newly made amendment to claim 1 fail to overcome Koteles et al. since such "opening with a closed perimeter" would have been merely a design choice well within the skill of an artisan, or obvious in view of Scirica et al. while providing the same and/or predictable results. Applicant's remarks are held to be responded to in the above grounds of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/
Examiner, Art Unit 3732

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732